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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,167	01/09/2004	Scott R. Watterson	13914.877	7517
22913	7590	07/17/2007		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER NGUYEN, TAM M	
			ART UNIT 3764	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/754,167

Applicant(s)

WATTERSON ET AL.

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16, 18, 26 and 28-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16, 18, 26 and 28-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

JEROME DONNELLY
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 26 is objected to because of the following informalities:

Claim 26 is dependent on canceled claim 25. It appears that claim 26 should now depend on claim 11 and examiner will make that assumption to expedite the prosecution.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 36-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 36, 37 and 38 recite the limitation "the coarse weight reading" in lines 1-2, 1-2, and 16 respectively. There is insufficient antecedent basis for these limitations in their respective claims. It appears as if claims 36 and 37 should depend on claim 35 for proper antecedent basis. This assumption will be made to expedite the prosecution.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-6, 8, 9, 11-16, 18, 26, 28-34 and 40 are rejected under 35 U.S.C. 102(a) as being anticipated by Wang et al. (2004/0147372).

3. As to claims 1-6, 8, 9, 11-16, 18, 26, 28-34 and 40, Wang et al. disclose a treadmill having a frame (20), a treadbase (30) with a deck (37) pivotally coupled at one end to the frame, first and second rollers (34,35), a belt (36), a deflection sensor (53) and a self-adjusting cushioning assembly (50) configured to provide cushioning to movement of the deck and adjust the amount of cushioning wherein the assembly comprises a user input mechanism/selection pad (22) and a controller electrically coupled to a sensor and cushioning mechanism such that the amount of cushioning, inherently within a range of available cushioning from hard to medium to soft, can be preselected by a user and the cushioning automatically adjusts based upon input provided by a user, and when a user, having a different weight from the previous user, steps on the tread base (see Fig. 1 & Paragraphs [0015]-[0017]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. '372 in view of Saunders et al. (7,026,946).

4. As to claim 7, Wang discloses a cushioned treadmill as described above. Wang does not disclose that the deflection assembly can ascertain the weight of the user.

Saunders et al. disclose a deflection sensor that can ascertain the weight of the user (see ABSTRACT, Col. 4, lines 11-37 & Figs. 1 and 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Wang's sensor with Saunders' sensor such that the weight of the user can be attained and utilized to configure exercise routines at optimal parameters according to the user.

5. As to claims 35-40, Wang and Saunders disclose a modified cushioned treadmill as described above (see discussion of claim 34). The modified treadmill would inherently provide a coarse weight reading based on the deflection of the deck when a user steps on the deck wherein the preadjustment setting provides an amount of cushioning within a range of available cushioning (see ABSTRACT '372).

Response to Arguments

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

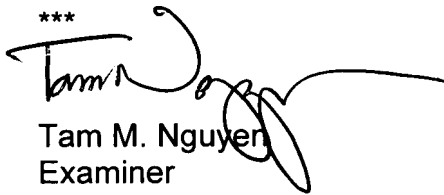
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 6, 2007



Tam M. Nguyen
Examiner
Art Unit 3764



JEROME DONNELLY
PRIMARY EXAMINER